

**CALENDAR ITEM
C28**

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06/28/16

PRC 1589.1

S 7

V. Caldwell

**RESCISSION OF LEASE APPROVAL, ACCEPTANCE OF QUITCLAIM DEED,
AND ISSUANCE OF A GENERAL LEASE – INDUSTRIAL USE**

APPLICANT:

Georgia-Pacific Gypsum, LLC

AREA, LAND TYPE, AND LOCATION:

9.69 acres, more or less, of filled and unfilled sovereign land in the San Joaquin River, adjacent to 801 Minaker Drive, near the city of Antioch, Contra Costa County.

AUTHORIZED USE:

Continued use, maintenance, and operation of an existing industrial facility, which includes filled land improved with an internal road, open stockpile area, elevated conveyor system, fencing, electrical service, a portion of a storm water discharge pipeline, concrete bulkhead, rock berm and other appurtenant facilities; and unfilled land improved with vehicle bridge, a conveyor system, a portion of a storm water discharge pipeline, portions of a bulkhead and rock berm previously authorized by the Commission; removal, installation, and repair of industrial wharf components with appurtenant facilities; and temporary authorization of mooring device (deadman) until construction is complete.

LEASE TERM:

10 years, beginning June 28, 2016.

CONSIDERATION:

Initial Base Rent: \$170,969; with an annual Consumer Price Index (CPI) adjustment, provided that the Adjusted Annual Rent will never be lower than the Base Rent then in effect.

SPECIFIC LEASE PROVISIONS:

1. **Insurance:**

Liability insurance in an amount of no less than \$5,000,000 per occurrence.

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2. **Bond:**
 Surety Bond in the amount of \$375,000.
3. **Warning signage:**
 Lessee shall place warning signage and/or buoys, clearly visible from the shore and the water, both upstream and downstream of the construction site, to provide notice of the wharf upgrade project and to advise the public to exercise caution. Applicant shall place and maintain such signage at all times during construction activities.
4. **Monitoring of pile segments left in place:**
 Lessee shall make a reasonable, good-faith effort to completely remove all timber pilings identified in the project description. In the event any of the pilings cannot be removed completely, Applicant shall remove all remaining portions of the pilings to a minimum depth of three feet below the existing mud line. Applicant shall monitor the site to ensure the piling segments remain buried and do not create a public hazard. If it is found that a piling segment has become exposed due to erosion or other cause, Applicant shall submit a remediation plan, stamped and signed by a California licensed civil engineer, to Commission staff for review and approval.
5. **Native American Monitor:**
 Lessee shall allow Native American monitors to be present during construction, if so requested by a tribal representative.
6. **Temporary Mooring Device:**
 Lessee may use concrete blocks (deadman) to prevent moored ships from drifting away from the wharf during tidal shifts or significant wind events. Upon completion of the wharf upgrades, the deadman will promptly be removed from the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1; California Code of Regulations, Title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

The California Legislature has delegated to the California State Lands Commission (Commission) exclusive control and jurisdiction over ungranted public trust lands. (Pub. Resources Code, §§ 6216, 6301). The Commission also retains the remaining State authority over lands that have been legislatively granted in trust to other governmental agencies (Pub. Resources Code, § 6301). The Commission implements the common law Public Trust Doctrine through careful consideration of its principles and the exercise of discretion within the specific context and location of proposed uses. In administering its trust responsibilities, the Commission exercises its discretionary authority in the best interests of the State, accommodating the changing needs of the public while preserving the public's right to use public trust lands for the purposes to which they are uniquely suited.

Commerce and navigation have been recognized as traditional public trust uses by the courts. (See, for example, *Marks v. Whitney* (1971) 6 Cal.3d 251, 259.) The subject facility is consistent with the common law Public Trust Doctrine because it is used to aid in water-dependent commerce and navigation. The facility allows for ship deliveries of gypsum rock product to the GP Gypsum Antioch fiberboard manufacturing plant. The proposed new lease will allow for the continued operation of the wharf facility and the berthing and mooring of gypsum delivery vessels.

Additionally, the proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years, a non-exclusive use provision, and a provision specifying that public trust uses may be limited only to the extent necessary to protect public health and safety during construction activities. As the Mitigated Negative Declaration (MND) for the Project states, the facility and planned upgrades will have a less-than-significant impact on recreation in the area, including water-borne recreation. There is sufficient area within the river span at the Project location to accommodate existing recreational uses of the waterway, including during construction, with little or no conflict between use of the wharf and use of the river for recreational purposes (MND, pp. 169-171; see also Other Pertinent Information, item 7).

The wharf and appurtenant facilities have existed for many years at this location; they do not permanently alienate the State's fee simple interest in the underlying land, and they do not impair public rights. Upon termination

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of the lease, the Lessee may be required to remove any improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes the facilities will not substantially interfere with public trust needs at this location at this time, and for the foreseeable term of the proposed lease.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises. The upland is an industrial facility some of which is on filled land with improvements including an internal road, open stockpile area, elevated conveyor system, fencing, and electrical service.
2. On October 27, 2011, the Commission authorized the ratification of prior assignments from Domtar Gypsum America Inc. to Georgia-Pacific Gypsum, LLC, and issuance of Lease No. PRC 1589.1, a General Lease – Industrial Use to Georgia-Pacific Gypsum, LLC, for a five-year term ending November 30, 2016, for continued use and maintenance of existing industrial docking and offloading facilities used in conjunction with an adjacent gypsum material manufacturing facility not under the Commission's jurisdiction. This lease also included a provision requiring the Lessee to develop and conduct a wharf upgrade project, to be completed by December 2015.
3. On August 19, 2015, the Commission authorized a General Lease – Industrial Use to Georgia-Pacific Gypsum, LLC for a term of 20 years. This lease enabled the Lessee to comply with the 2011 lease requirements and authorized the activities necessary to implement the wharf upgrade project. The lease also authorized an increase in the lease area from 7.49 acres to 9.69 acres to include the proposed upgraded facilities and an area for larger ships to moor.

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4. As planned, the proposed upgrades entail removal of five existing timber breasting and mooring dolphins (containing a total of 150 creosote-treated timber pilings) and their replacement with four new breasting dolphins, each with a cone fender system, and three new hollow core steel monopole mooring dolphins, with connecting walkways; and repair of one timber piling and 12 stringers (beam/lumbers) on the existing wharf.
5. Removal of the creosote-treated timber pilings will occur with a clamshell bucket or chain. If pilings break at least three feet below the mudline during an extraction attempt, the stub will be left in place and the location of the stub will be recorded and mapped. Removal and construction will be entirely supported from barges moored in the water. All removal and construction activities were anticipated to occur between August 31 and November 30, 2015. However, the Lessee was unable to commence the project prior to this deadline. Accordingly, the wharf upgrade project described above will commence under the proposed new lease.
6. The Lessee is also requesting a change in the lease term to 10 years. Staff is therefore requesting rescission of the lease authorization approved at the August 19, 2015 Commission meeting (http://archives.slc.ca.gov/Meeting_Summaries/2015_Documents/08-19-15/Items_and_exhibits/C43.pdf), and issuance of a new General Lease – Industrial Use. Because the lease authorized at the August 19, 2015 Commission meeting was never executed by the Lessee, the lease currently in effect is that which was authorized in 2011 and expires on November 30, 2016. Staff is requesting authorization for acceptance of a quitclaim deed for this lease from the Lessee.
7. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the production, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
8. Pursuant to the Commission's Delegation of Authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit.14, § 15025), Commission staff prepared a Mitigated Negative Declaration (MND) identified as CSLC MND No. 778, State Clearinghouse No. 2015062045, for the Georgia Pacific Gypsum Antioch Wharf Upgrade Project. The MND was prepared and circulated for public review pursuant

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to the provisions of CEQA, and adopted by the Commission on August 19, 2015 (Calendar Item 43).

On August 19, 2015, the Commission found that, based upon the entire record before the Commission, including the Initial Study, the MND, and the comments received in response thereto, there is no substantial evidence that the project may have a significant effect on the environment and that the MND reflects the Commission's independent judgment and analysis; California Code of Regulations, Title 14, section 15074, subdivision (b). A Mitigation Monitoring Program was prepared and adopted in conformance with the provisions of CEQA (Pub. Resources Code, § 21081.6).

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS NEEDED:

U.S. Army Corps of Engineers
National Marine Fisheries Service
U.S. Fish and Wildlife Service
Central Valley Regional Water Quality Control Board
California Department of Fish and Wildlife
City of Antioch

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the MND, CSLC No. 778, State Clearinghouse No. 2015062045, and a Mitigation Monitoring Program were prepared by Commission staff and adopted by the Commission on August 19, 2015.

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Find that the Commission reviewed and considered the information contained in the previously adopted MND, and that in the Commission's independent judgment, the scope of activities to be carried out under the lease to be issued under this authorization have been adequately analyzed, none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and, therefore, no additional CEQA analysis is required.

Re-adopt the Mitigation Monitoring Program, as contained on file in the Sacramento Office of the State Lands Commission as Exhibit C to Calendar Item 43 from the August 19, 2015, Commission meeting (http://archives.slc.ca.gov/Meeting_Summaries/2015_Documents/08-19-15/Items_and_exhibits/C43.pdf).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the rescission of lease approval, acceptance of a quitclaim deed, and issuance of a General Lease – Industrial Use will not substantially interfere with the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize acceptance of a quitclaim deed for Lease No. PRC 1589.1, effective June 28, 2016.
2. Rescind previous lease authorization approved at August 19, 2015 Commission meeting (Calendar Item 43).
3. Authorize issuance of a General Lease – Industrial Use to Georgia-Pacific Gypsum, LLC, beginning June 28, 2016, for a term of 10 years, for continued use, maintenance, and operation of an existing industrial facility which includes filled land improved with an internal road, open stockpile area, elevated conveyor system, fencing, electrical service, a portion of a storm water discharge pipeline,

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concrete bulkhead, rock berm and other appurtenant facilities; and unfilled land improved with a vehicle bridge, a conveyor system, a portion of a storm water discharge pipeline; portions of a bulkhead and rock berm; removal, installation, and repair of industrial wharf components with appurtenant facilities; and temporary authorization of a mooring device (deadman) until construction is complete as described on Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; Base Rent of \$170,969 per year with an annual Consumer Price Index adjustment, as provided in the lease provided that the Adjusted Annual Rent will never be lower than the Base Rent then in effect; insurance in an amount no less than \$5,000,000 per occurrence; and surety bond in the amount of \$375,000.

EXHIBIT A

PRC 1589.1

LAND DESCRIPTION

A parcel of tide and submerged land lying in the bed of the San Joaquin River, Contra Costa County, California, approximately one mile east of Antioch, California, more particularly described as follows:

COMMENCING at Sando R.M. 1, CCS27, Zone 3, coordinates being Y(N)=553,227.08 feet and X(E)=1,629,601.00 feet, said R.M. 1 being S 89°41'58" E, 220.67 feet from the intersection of the northerly R/W lines of Wilbur Avenue and Santa Fe Railroad; thence N 20°43'25.2" E, 1,092.22 feet to the intersection of the easterly line of Kaiser Gypsum Co. and the southerly or left bank of the San Joaquin River being the POINT OF BEGINNING; thence downstream along said left bank the following 24 courses,

- 1) N 63°02'03" W 16.26 feet;
- 2) S 82°43'30" W 47.38 feet;
- 3) S 67°17'08" W 46.62 feet;
- 4) S 84°52'58" W 67.27 feet;
- 5) N 60°01'06" W 60.03 feet;
- 6) N 13°14'26" W 69.86 feet;
- 7) N 82°02'33" W 93.90 feet;
- 8) S 29°44'41" E 16.12 feet;
- 9) S 63°04'20" W 70.66 feet;
- 10) S 78°57'33" W 41.77 feet;
- 11) S 72°26'47" W 102.79 feet;
- 12) N 72°21'00" W 46.17 feet;
- 13) N 89°07'07" W 65.01 feet;
- 14) S 67°56'27" W 165.08 feet;
- 15) N 82°37'55" W 116.97 feet;
- 16) S 76°10'17" W 133.88 feet;
- 17) N 66°40'56" W 126.32 feet;
- 18) S 79°06'53" W 26.48 feet;
- 19) N 54°33'04" W 157.05 feet;
- 20) N 78°20'46" W 163.37 feet;
- 21) N 28°51'21" W 55.95 feet;
- 22) N 71°33'54" W 72.73 feet;
- 23) N 76°04'18" W 128.79 feet;
- 24) N 87°07'11" W 58.07 feet to a point on the west property line of Kaiser Gypsum;

thence leaving said left bank of the San Joaquin River N 01°23'51" E, 34.46 feet; thence S 76°14'24" E, 233.09 feet; thence S 79°06'30" E, 349.98 feet; thence S 88°38'30" E, 205.06 feet; thence N 05°13'30" E, 268.95 feet; thence S 84°46'30" E, 1071.19 feet; thence S 05°13'30" W, 373.06 feet to a point on said left bank ; thence along said bank N 48°42'31" W, 119.44 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the left bank of the San Joaquin River.

END OF DESCRIPTION

REVISED BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT 7/24/2015. ORIGINAL DESCRIPTION PREPARED BY "TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR." ON JULY 15, 1980 AS FOUND IN "PRC 1589".

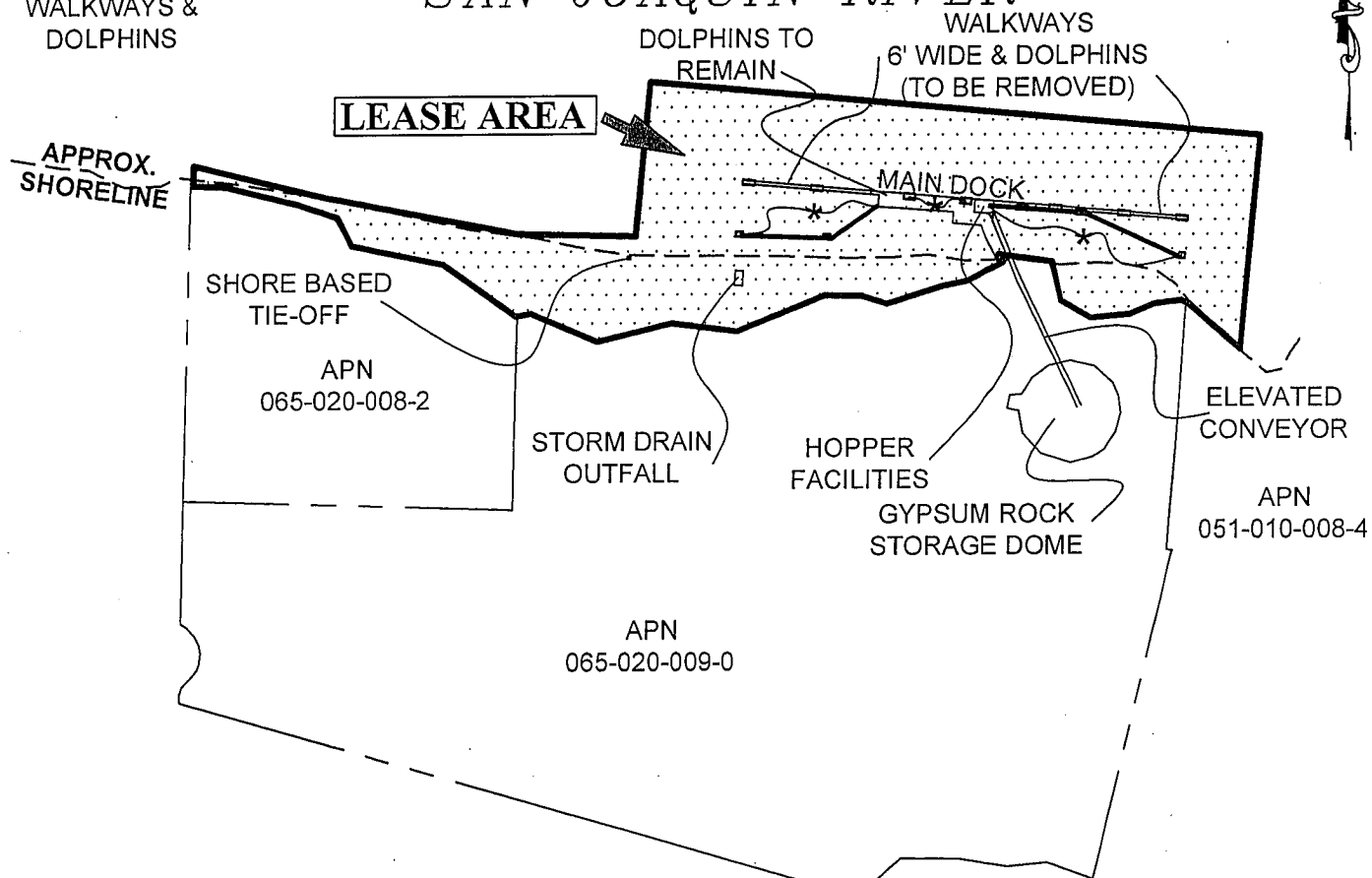


NO SCALE

*= PROPOSED NEW
WALKWAYS &
DOLPHINS

SITE

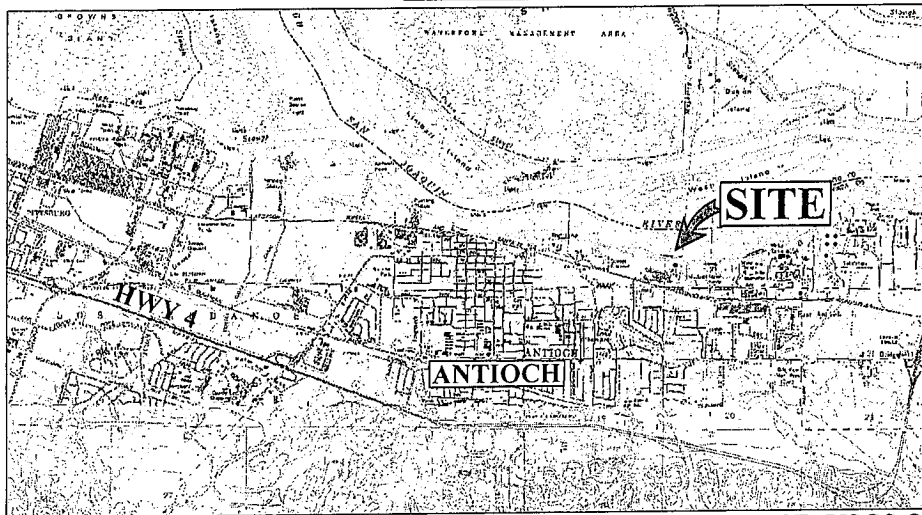
SAN JOAQUIN RIVER



801 MINAKER DR.
ANTIOCH, CA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 1589.1
GEORGIA-PACIFIC
GYPSUM LLC.
APN:065-020-008-2,-009-0 &
051-010-008-4
GENERAL LEASE -
INDUSTRIAL USE
CONTRA COSTA CO.



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

MJF 7/24/15